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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/385,834      08/30/99      WRIGHT      J      76891

HM12/0605  
WELSH & KATZ LTD  
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EXAMINER

QAZI, S

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

06/05/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/385,834

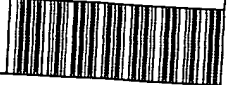
Applicant(s)

Jeffery L.C. Wright

Examiner

Sabiha Qazi

Group Art Unit  
1616



☒ Responsive to communication(s) filed on Aug 30, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-29

Of the above, claim(s) \_\_\_\_\_ is/are pending in the application.

☐ Claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☒ Claims 1-29 \_\_\_\_\_ is/are objected to.

\_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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**Election/Restriction**

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1, 3, 4, 12 and 13 drawn to nutritional supplement, comprising sterol and an omega-3 fatty acid, classified in class 514, subclass 169+.

II. Claims 1, 2, 5-11, drawn to nutrition supplement when sterol and fatty acid form an ester, classified in class 514, subclass 169+.

III. Claims 15-26 drawn to methods of lowering cholesterol and triglyceride level by nutritional supplement comprising sterol and an omega-3 fatty acid, classified in class 514, subclass 169+; class 552, subclass 540+.

IV. Claims 15-26 drawn to methods of lowering cholesterol and triglyceride level by nutritional supplement comprising when sterol and fatty acid form an ester, classified in class 514, subclass 169+.

V. Claim 27 drawn to the use of nutritional supplement comprising when sterol and fatty acid form an ester for lowering the cholesterol level, classified in class 514, subclass 169+.

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VI. Claim 27 drawn to the use of nutritional supplement comprising when sterol and fatty acid for lowering the cholesterol level, classified in class 514, subclass 169+.

VII. Claim 28 drawn to a foodstuff having nutritional supplement comprising when sterol and fatty acid form an ester, classified in class 514, subclass 169+.

VIII. Claim 29 drawn to use of the nutritional supplement in the manufacture of a foodstuff (claim 2), classified in class 514, subclass 169+.

1. The inventions are distinct, each from the other because of the following reasons:
2. Inventions of group I-VIII require separate searches. The search required for Group I is not required for Group II. A reference used to reject one group would not be used to reject the invention of another group. They are patentably distinct.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, the database and other searches

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for the entire genus would represent excessive burden on the Examiner. The restriction for examination purposes as indicated is proper.

4. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

5. A telephone call was made to Attorney Gerald T. Shekleton on 6/1/00 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventor ship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventor ship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

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7. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventor ship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventor ship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

9. It is suggested that in order to advance prosecution, the non elected subject matter be canceled when responding to this office action.

***Telephone Inquiry Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha N. Qazi, whose telephone number is (703) 305-3910. The examiner can normally be reached on Monday through Friday from 8 a.m. to 6 p.m. The fax phone number for this Group is (703) 308-4556.


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

6/2/00

  
Sabiha N. Qazi Ph.D.

Examiner, 1616